IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 2 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

SMT. AVANIBEN AJAYBHAI

Appearance:

1. WEALTH TAX REFERENCE No. 2 of 1989

MR TANVISH U BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The Revenue has come in reference to this Court raising the following question of law :-

"Whether, the amount paid as compulsory deposit under the Compulsory Deposit (Income-tax Payers) Scheme, 1974 is to be treated as exempt from Wealth-tax ?"

2. In this case, the assessment years involved are assessment years 1982-83 and 1983-84. The Wealth-tax Officer in the course of the assessment proceedings rejected the assessee's claim to exclude from the assessable wealth the amount paid as compulsory deposit under Compulsory Deposit (Income-tax Payers) Scheme, 1974. He has also rejected the alternative contention raised by the assessee to have the said deposit valued on actuarial basis and the discounted value included in the net wealth of the assessee. The assessee preferred an appeal before the Appellate Assistant Commissioner who confirmed the view taken by the Wealth-tax Officer. The matter was carried by the assessee to the Tribunal and the Tribunal accepted the arguments advanced by the assessee and directed the Wealth-tax Officer to treat the compulsory deposit under the Compulsory Deposit (Income-tax Payers) Scheme, 1974 as exempt. Since the main contention of the assessee was accepted, the Tribunal did not consider the alternative submission made by the assessee.

On the aforesaid facts, the Tribunal has referred the above question for the opinion of this Court.

3. Heard Mr Tanvish Bhatt, learned standing counsel appearing for the revenue. None appears on behalf of the respondent though the notice was served.

4. Mr Tanvish Bhatt, learned standing counsel has invited our attention to the decision of the Calcutta High Court in the case of Smt. Sunanda Devi Singhania vs. Commissioner of Wealth-tax, (1993) 204 ITR 842 where a view was taken by the Calcutta High Court that the deposit under the Compulsory Deposit Scheme was clearly a deposit. There are substantial differences in the two schemes, namely, Annuity Deposit Scheme and Compulsory Deposit Scheme (Income-tax Payers) Scheme. The difference is with regard to deposit, commutation and repayment of the deposit. The Tribunal was right in holding that the assessee was not entitled to deduction of the estimated amount of capital gains tax and that compulsory deposit should be taken into consideration for the purpose of computing the net wealth of the assessee for the assessment years 1979-80 and 1980-81.

However, in the said judgment itself a reference was made to the Finance Act, 1980. By virtue of this Act, Section 7A was inserted in the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 with effect from April 1, 1975 which provides that for the purposes of exemption under Section 5 of the Wealth-tax Act, 1957, the amount of compulsory deposit shall be deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949 applies. The introduction of Section 7A in the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974, granting exemption under Section 5 of the Wealth-tax Act, 1957, to the compulsory deposits is another indication of the intention of the Legislature to treat the deposits as assets and grant exemption because the deposits under the compulsory Deposit Scheme would not otherwise be entitled to any exemption under the Wealth-tax Act.

Since a specific exemption was granted by virtue of the amendment made in the Wealth-tax Act, the amount standing to the credit of the assessee as compulsory deposits would not be liable to wealth-tax. It appears that the Tribunal's attention has not been drawn to this provision when the Tribunal has decided the matter following the decision of the Delhi Bench in the case of S.O. Nargolwala (5 ITD 690). In any case, the view taken by the Tribunal does not call for any interference by this Court for the reasons stated hereinabove.

We, therefore, answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-